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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 485

ROSCOE A. COFFMAN

Appellant,

vs.

FEDERAL LABORATORIES, INC., AND THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

STATEMENT AS TO JURISDICTION

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 485

ROSCOE A. COFFMAN,

Plaintiff-Appellant,

vs.

FEDERAL LABORATORIES, INC., A CORPORATION OF THE STATE OF DELAWARE,

Defendant-Appellee;

UNITED STATES OF AMERICA,

Intervenor

STATEMENT OF JURISDICTION

The basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the order entered in the District Court of the United States for the Western District of Pennsylvania on August 1, 1944, is as follows:

I

The statute believed to sustain the jurisdiction of this Court is the Act of Congress of April 24, 1937, U. S. C. Tit. 28, Sec. 380(a).

II

The statute of the United States the validity of which is involved, is the Royalty Adjustment Act of 1942, 56 Stat.

1015, U. S. C. Tit. 35, Secs. 89, 96, approved October 31, 1942.

The pertinent provisions of this statute are as follows:

The title is: "An Act to provide for adjusting royalties for the use of inventions for the benefit of the United States, in aid of the prosecution of the War, and for other purposes."

Section 1 of the Act provides that whenever an invention, whether patented or unpatented, shall be manufactured, used, sold, or otherwise disposed of for the United States, with license from the owner thereof, and such license includes provisions for the payment of royalties "the rates or amounts of which are believed to be unreasonable or excessive by the head of the department or agency of the Government which has ordered such manufacture, use, sale, or other disposition, the head of the department or agency of the Government concerned shall give written notice of such fact to the licensor and to the licensee, within a reasonable time after the effective date of said notice, in no event less than ten days. The head of the department or agency of the Government concerned, shall by order fix and specify such rates or amounts of royalties, if any, as he shall determine to be fair and just, taking into account the conditions of wartime production, and shall authorize the payment thereof by the licensee to the licensor on account of such manufacture" etc. Provided, however, that the licensee or licensor, if he so requests within ten days after the effective date of said notice, may within thirty days from the date of such request, present in writing or in person any facts or circumstances which may in his opinion have a bearing upon the rates or amounts of royalties if any to be determined, fixed and specified, "and any order fixing and specifying the rates and amounts of royalties shall be issued within a

reasonable time after such presentation. Such licensee shall not after the effective date of said notice pay to the licensor, nor charge directly or indirectly to the United States, a royalty, if any, in excess of that specified in said order on account of such manufacture, use, sale, or other disposition. The licensor shall not have any remedy by way of suit, set-off or other legal action against the licensee for the payment of any additional royalty remaining unpaid, or damages for breach of contract or otherwise, but such licensor's sole and exclusive remedy, except as to the recovery of royalties fixed in said order, shall be as provided in Section 2." Section 2 provides that any licensor aggrieved by any order fixing and specifying the maximum rates or amounts of royalties under a license issued by him may institute suit against the United States in the Court of Claims, or in the District Courts of the United States insofar as such courts may have concurrent jurisdiction with the Court of Claims to recover such sum, if any, as when added to the royalties fixed and specified in such order shall constitute fair and just compensation to the licensor for the manufacture, use, or other disposition of the licensed invention for the United States, taking into account the conditions of wartime production. In any such suit the United States may avail itself of any and all defenses, general or special, that might be pleaded by a defendant in an action for infringement as set forth in Title 60 of the Revised Statutes, or otherwise.

Section 3 gives the head of any department or agency of the Government power to enter into an agreement of compromise with the licensor of such invention for past or future compensation to the owner or licensor.

Section 4 provides that whenever a reduction in the rates or amounts of royalties is effected by order pursuant to Section 1, or by compromise pursuant to Section 3, such

reduction shall inure to the benefit of the Government by way of a corresponding reduction in the contract price to be paid for such manufacture of such invention or by way of refund if already paid the licensee.

Section 5 provides that the head of the department or agency may delegate any power or authority conferred by this Act to such persons as he may designate or appoint.

Section 6 provides that for the purposes of this Act the manufacture, use, or sale of an invention, whether patented or unpatented, by a contractor, sub-contractor, or any person, firm or corporation for the Government, and with the authorization of the Government, shall be construed as manufacture, use or sale for the United States, and for the purposes of the Act of June 25, 1910, as amended (40 Stat. 705, 35 U. S. C. 68), the use or manufacture of an invention covered by a patent by a contractor, sub-contractor, or any person for the Government, and with the authorization or consent of the Government, shall be construed as use or manufacture for the United States.

Section 7. This Act shall apply to all royalties directly or indirectly chargeable to the United States for any supplies, equipment or materials. Sections 1 and 2 shall remain in force only during the continuance of the present War and for six months thereafter, "except that as to rates accrued or liabilities incurred prior to the termination thereof, the provisions of this act shall be treated as remaining in force and effect for the purpose of settling, sustaining, qualifying, or defeating any suit or claim hereunder."

Section 8. The head of each department or agency of the Government may issue such rules and regulations and require such information as may be necessary and proper to carry out the provisions of this Act.

III

The order or judgment sought to be reviewed was entered August 1, 1944, and the application for appeal was presented within due time, to wit: August 29, 1944.

IV

Nature of the Case

(a) The plaintiff Coffman is the sole owner of Letters Patent relative to improvements in starting motors, for internal combustion engines and shells for use therewith. The starters are necessary and are used on a very large percentage of aircraft being used by the United States and its Allies. The starters are set in motion by the explosion of cartridges, or shells, likewise covered by plaintiff's patents, the motor being started not by an explosion resulting from the discharges of said cartridges or shells but by the control of the gases generated from the burning of the charge contained in the shells controlled in the manner and method described in the patents.

(b) On December 8, 1932, plaintiff executed and delivered an exclusive license agreement to defendant Federal Laboratories, Inc., to make, use and sell the starters and shells embodying plaintiff's inventions, the licensee agreeing to pay plaintiff a license fee or royalty of 6% of the net selling price of the starters, parts and shells.

(c) The amounts of royalties due and owing to plaintiff are in dispute, but defendant Federal Laboratories, Inc. in its answer filed in this cause admits that there is a balance due and owing plaintiff of $180,230.44 (defendant's answer par. 34), of which $141,680.08 is admitted to be due plaintiff for 1943.

(d) On June 14, 1944, plaintiff filed Civil Action No. 3046 in the District Court of the United States for the Western District of Pennsylvania for an accounting against Federal Laboratories, Inc. and Breeze Corporations, Inc. of royalties due plaintiff under his agreement of December 8, 1932, and also for an account of other moneys due plaintiff and alleged to have been withheld from him through fraudulent concealment of the consideration received by the licensee and Breeze Corporations, Inc. on the sale of manufacturing rights under the Coffman Patents to an English Company. Plaintiff in Count 3 demanded a money judgment against the defendant alleging there was due him from defendant $371,625.96 and interest, as by reference to the complaint will fully appear.

(e) On February 24, 1943, notice was given plaintiff by the Navy Department, and on March 3, 1943, by the War Department, that the royalties reserved to him under his agreement of December 8, 1932, were believed to be unreasonable and excessive.

(f) On December 18, 1943, the War Department issued its Royalty Adjustment Order No. W-9, and on December 23, 1943, the Navy Department issued its Royalty Adjustment Order No. N-7, copies of which are annexed to the complaint, which allegedly, under the terms of the Royalty Adjustment Act aforesaid, determined that:

> "(1) Fair and just rates and amounts of royalties for the manufacture, use, sale or other disposition of said alleged inventions are hereby determined, fixed and specified to be as follows:
>
> (a) Upon each starter sold to or for either the War Department or the Navy Department, the sum of Eight ($8) Dollars each, and
>
> (b) Upon parts and cartridges sold to or for either the War Department or the Navy Department, no royalties;

but not to exceed the sum of Fifty Thousand and ($50,000) Dollars to be paid to Licensor in each calendar year commencing January 1, 1943 in respect of starters sold to or for the War Department and the Navy Department, added together.

(2) Until further Order, Licensee is hereby authorized to pay to Licensor, * * * not to exceed the amount determined, fixed and specified in paragraph (1) hereof, and no more, under

(a) the above mentioned license agreement dated December 8, 1932, * * *

(3) Licensee is hereby directed to pay over to the Treasurer of the United States, through Commanding General, Army Air Forces Materiel Command, attention, Royalty Adjustment Board, Wright Field, Dayton, Ohio, the balance, in excess of the payments authorized by paragraph (2) hereof, of all royalties specified in the licenses or arrangements referred to in paragraph (2) hereof which were due to Licensor and were unpaid on the effective date of said notice, or since said date have or may hereafter become due to Licensor on account of any manufacture, use, sale or other disposition of said inventions for the War Department or the Navy Department, heretofore occurred or hereafter occurring while Sections 1 and 2 of said Act remain in force; and demand is hereby made for payment forthwith of so much of said balance as is now due to Licensor."

(g) In his verified complaint filed in the court below plaintiff alleged the issuance of said Royalty Adjustment Orders. Plaintiff alleged that neither Federal Laboratories, Inc. nor Breeze Corporations, Inc. have made payment to plaintiff of the $50,000.00 mentioned in Royalty Adjustment Orders Nos. W-9 and N-7, nor have either of said defendants made payment of any part of the balance due plaintiff to the Treasurer of the United States or anyone else, pursuant to paragraph (3) of the Royalty Adjustment

Orders. The complaint also set forth the action heretofore filed by plaintiff in the United States District Court for the District of New Jersey, and the pendency before this Court of an appeal from the order dismissing plaintiff's complaint. (The appeal in this Court is pending under number 71, October Term 1944.)

(h) Plaintiff alleged in his complaint that the Act of Congress known as the Royalty Adjustment Act, P. L. 768 (77th Congress, Chapter 634, Second Session) is null and void, and that the said Royalty Adjustment Orders made in pretended compliance with said statute are likewise null and void, for the following reasons:

(1) As taking plaintiff's property for public use without just compensation and depriving plaintiff of his property without due process of law in violation of the Fifth Amendment;

(2) That said Act of Congress and said Royalty Adjustment Orders operate to take plaintiff's property in his patents and in his license agreement for public use without just compensation;

(3) That said Act of Congress attempts to deprive plaintiff of all remedy by suit or otherwise against his licensees for payment of the royalties reserved in his license agreement, wherein the validity of plaintiff's patents is conceded, and relegates plaintiff to an action against the United States in the Court of Claims to recover such sum, if any, as when added to the royalties fixed and specified in said Orders, "shall constitute fair and just compensation to the licensor" for the use of the invention, "and in which such suit the United States may avail itself of any and all defenses, general and special, that might be pleaded by a defendant an action for infringement," and which defenses would not be open or available to the licensees;

(4) That the statute and orders deprive plaintiff of his limited patent monopoly without just compensation, within the meaning of the Fifth Amendment;

(5) That the right of action attempted to be accorded plaintiff by a suit in the Court of Claims does not and cannot give plaintiff just compensation for his rights in said patents and his rights in his royalty agreement;

(6) That said Act of Congress and said orders operate to deprive plaintiff of royalties earned under said license agreement prior to December 18, 1943, in excess of $250,000.00, for an award of $50,000.00 royalties;

(7) Said statute and orders are invalid in that they deprive plaintiff of all royalties reserved under said license agreement for parts manufactured and sold under said patents, and for shells and cartridges covered by plaintiff's patents and manufactured and sold by defendants;

(8) Said statute and orders operate to deny plaintiff his rights to an accounting in the action pending in the District Court for the Western District of Pennsylvania, and the rights to recover therein for any and all royalties due plaintiff for 1943 and thereafter;

(9) Said Act of Congress violates Article I, Section I and Section 8 of the Constitution, in that it is an unconstitutional delegation of legislative power setting up no standards for the guidance of agencies of the Government, and drawing no distinction between the manufacture of articles, whether patented or unpatented, and whether they are manufactured under a valid license or manufactured under a patent where no license has been granted.

(i) Plaintiff prayed:

(1) For judgment for all royalties due him from defendants.

(2) That a temporary and final injunction issue enjoining and restraining Federal Laboratories, Inc. and Breeze Corporations, Inc. from complying with the Royalty Adjustment Orders aforesaid and from paying any of the royalties due and to grow due to plaintiff under said license agreement to the Treasurer of the United States pursuant to the command of the Royalty Adjustment Orders.

(3) That a special three-judge court be convened as provided by U. S. C. Title 28, Sec. 380(a).

(4) That plaintiff's royalty agreement be decreed to be terminated because of its breach by defendants.

(j) Upon the filing of plaintiff's verified complaint with exhibits attached, District Judge Gibson issued a temporary restraining order, and in compliance with the Act of Congress of August 24, 1937, U. S. C. Tit. 28, Section 380(a), a special court was summonded and notice was duly given the Attorney General. The temporary restraining order was served before any of plaintiff's royalties were paid to the Treasurer of the United States.

(k) The cause duly came on for hearing before the Special Court on July 18, 1944; the United States meanwhile having moved to intervene and become a party to the cause, and moving to strike certain paragraphs of the complaint.

(l) An August 1, 1944 the Special Court filed its order, a copy of which is annexed, denying plaintiff an injunction as prayed for in his complaint, dissolving and terminating the temporary injunction and striking out portions of plaintiff's complaint.

V

The cases believed to sustain the jurisdiction of the court are:

Dodge v. *Woolsey*, 59 U. S. 331;
Pollock v. *Farmers Loan & Trust Co.*, 157 U. S. 429;
Aetna Life Insurance Co. v. *Haworth*, 300 U. S. 239, 240;
City Bank v. *Schnader*, 291 U. S. 24;
Vicksburg Waterworks Co. v. *Vicksburg*, 185 U. S. 65;
Carter v. *Carter Coal Co.*, 298 U. S. 238, wherein the court quoting from the decision in *Pennsylvania* v. *West Virginia*, 256 U. S. 553, said:

"One does not have to wait the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending that is enough."

Pierce v. *Society of Sisters*, 268 U. S. 510, 535, 536;
Euclid v. *Ambler Realty Co.*, 272 U. S. 365;
Swift v. *United States*, 276 U. S. 311, 326;
Marconi Wireless Tel. Co. v. *Simon*, 246 U. S. 46;
Cramp & Sons v. *International Curtis Marine Turbine Co.*, 246 U. S. 28;
Clark v. *Poor*, 274 U. S. 554

VI

How the Court Below Abused Its Discretion

The court below should have issued its injunction as prayed for because:

(a) It cannot be said there was no justiciable controversy because an injunction was sought to restrain the defendant from paying plaintiff's royalties, due him for 1943 under his contract of December 8, 1932, to the Treasurer of the United States pursuant to the command of the Royalty Ad-

justment Orders Nos. W-9 and N-7. The injunction was served before any of plaintiff's royalties for 1943 were paid over, and it caught the money in the hands of plaintiff's debtor.

Prior to the service of the notices under the statute on February 24 and March 3, 1943, a substantial part of plaintiff's royalties were being paid him under the terms of his contract of December 8, 1932 (Complaint, par. 22). Service of such notices terminated all payments to plaintiff. The Royalty Adjustment Orders threatened to destroy his vested rights under his contract made in 1932.

If plaintiff may not restrain his debtor from complying with the Royalty Adjustment Orders and paying his money to the Treasurer of the United States, he certainly will be met with the defense of payment on the trial of the action below to recover his royalties if his royalties are paid to the Treasurer of the United States. If the Royalty Adjustment Act is valid plaintiff may not even sue at law for any royalties due him in excess of $50,000 in any year after January 1, 1943, and until six months after the war.

Why should plaintiff be compelled to await the complete destruction of his rights, when the legality of the threatened injury can be speedily and effectively determined in this action in equity?

The Royalty Adjustment Act of 1942 under which Orders Nos. W-9 and N-7 were issued is obviously void. It contains not a single standard for the guidance of the "purchasing agency" which believes the price charged is too great because of royalties payable to inventors.

It is not an act of Eminent Domain, for the taking is only of accounts receivable, or money due inventors, and they are not compensated by being given the value of what is taken, but something far less, i.e. an arbitrary amount intended to be far less than the value of that which is taken.

The sole right to sue in the Court of Claims is to recover not what plaintiff's contract gave him (with the validity of his patents conceded) but unliquidated and uncertain compensation for the use made of plaintiff's patents subject to any and all defenses that agile minds can conjure up.

The Royalty Adjustment Orders destroyed vested rights of the plaintiff in both his patents and his contract of December 8, 1932.

Moreover, under the Constitution money due a citizen can only be taken under the taxing power and the Royalty Adjustment Act is a tax act is invalid under Article I, Sections 8 and 9.

JOHN G. BUCHANAN,
WILLIAM H. ECKERT,
JAMES D. CARPENTER, JR.,
Of Counsel with Plaintiff-Appellant.

APPENDIX "A"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 3046

ROSCOE A. COFFMAN, *Plaintiff*,

vs.

FEDERAL LABORATORIES, INC., a Corporation of the State of Delaware, and BREEZE CORPORATION, INC., a Corporation of the State of New Jersey, *Defendants*,

THE UNITED STATES OF AMERICA, *Intervenor*.

Before Jones, Circuit Judge and Gibson and Schoonmaker, District Judges.

ORDER.

And now, to wit, August 1st, 1944, the Court being of the opinion that the instant case is not to be distinguished from the case of Roscoe A. Coffman *vs.* Federal Laboratories, Inc., and Breeze Corporation, Inc.; United States of America Intervenor, Civil action No. 3289 in the District Court of the United States for the District of New Jersey in that the controversy of the private parties to the action fails competently to raise a presently justiciable question as to the constitutionality of the Royalty Adjustment Act of October 31, 1942 (U. S. C. A. Secs. 89-96), or the validity of the Royalty Adjustment orders (W-9 and N-7) issued in pursuance of said Act, and the Court being of the further opinion that the decision of the United States District Court for the District of New Jersey in the case above referred to correctly indicates the appropriate disposition to be made of the motions now pending before this Court in the above-entitled matter.

Now, therefore, it is hereby ordered and directed that the temporary Restraining Order heretofore issued on June 14, 1944, be and the same is hereby dissolved and terminated, that the plaintiff's motion for an injunction be and the

same is hereby denied, and that, on motion of the United States of America, paragraphs 24, 25, 26, 27, 28, 29, 30 and 32 and sub-paragraphs (3) and (4) of plaintiff's prayers for relief be and the same are hereby dismissed as not being relevant to the issues in controversy between the private parties to the action.

By the Court.

CHARLES ALVIN JONES,
United States Circuit Judge;
R. M. GIBSON,
United States District Judge;
F. P. SCHOONMAKER,
United States District Judge.

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IN THE

Supreme Court of the United States

No. 485—October Term, 1944.

Roscoe A. Coffman,

Appellant,

vs.

Federal Laboratories, Inc.,
a corporation,

Appellee,

United States of America,

Intervenor.

MOTION UNDER RULE 20, PARAGRAPH 8.

Now comes the appellant, Roscoe A. Coffman, and moves that the above entitled cause be heard with cause No. 71, October Term, 1944, entitled "Roscoe A. Coffman, appellant, *vs.* Breeze Corporations, Inc., appellee, and the United States of America, Intervenor." This motion is made because both cases involve the same question, i.e., the constitutional validity of the same two Royalty Adjustment Orders, namely: W-9 and N-7, and the constitutionality of the Royalty Adjustment Act of 1942, 56 Stat. 1013-1015; 35 USCA 89-96.

The record in case No. 71, October Term, 1944, was filed April 28, 1944, and is an appeal from the District Court of the United States for the District of New Jersey.

This cause was docketed September 20, 1944, and is an appeal from the District Court of the United States for the Western District of Pennsylvania.

The record in case No. 71 has been printed and served. It is anticipated that the record in case No. 485 cannot in due course be printed and served under about thirty days from this date.

Dated September 25, 1944.

Respectfully submitted,

JAMES D. CARPENTER, JR.,
JOHN G. BUCHANAN,
WILLIAM H. ECKERT,
of Counsel with Appellant.

SUPREME COURT OF THE UNITED STATES.

No. 485.—October Term, 1944.

Roscoe A. Coffman, Appellant, *vs.* Federal Laboratories, Inc., and the United States of America.	Appeal from the District Court of the United States for the Western District of Pennsylvania.

[January 2, 1945.]

Mr. Chief Justice Stone delivered the opinion of the Court.

This is a companion case to No. 71, *Coffman* v. *Breeze Corporations, Inc. and the United States*, decided this day.

Like that case the present suit was brought by appellant against Federal Laboratories, Inc. and Breeze Corporations, Inc. to secure among other things an adjudication of the constitutional validity of the Royalty Adjustment Act of Congress of October 31, 1942, 56 Stat. 1013, 35 U. S. C. Supp. III, §§ 89-96. It sought also to enjoin defendants from paying over to the Treasury of the United States royalties alleged to be due upon the license agreements involved in the Breeze suit, as required by the notices and orders of the War and Navy Departments served upon appellant and the defendants pursuant to the Act.

In addition, the bill of complaint alleges that defendants owe royalties to appellant under the license agreements, for which it prays an accounting. By way of anticipation of the defense that the Royalty Adjustment Act and the notices and orders of the War and Navy Departments require appellee to pay the royalties into the Treasury, appellant sets up the unconstitutionality of the Act.

A district court of three judges was convened to hear the cause as required by the Act of August 24, 1937, 50 Stat. 752, 28 U. S. C. § 380(a), and the United States was allowed to intervene as a party in accordance with § 1 of the Act. 50 Stat. 751, 28 U. S. C. § 401. The District Court, on motion of the Government, dismissed so much of the bill of complaint as sought an adjudication of the constitutional validity of the Royalty Adjustment Act and of the notice and orders issued under it. It struck

from the bill of complaint the anticipatory allegations that the Royalty Adjustment Act and the orders with respect to the royalties owing appellant are unconstitutional and void, and it struck the prayer of the bill for an injunction.

For the reasons stated in our opinion in the Breeze case we hold that appellant has shown no ground for equitable relief by way of injunction. The allegations of unconstitutionality of the Royalty Adjustment Act and the orders were pleaded only as supporting the prayer for an injunction and were therefore properly stricken with that prayer. The allegations are not essential to or a proper part of the cause of action for an accounting and recovery of the royalties alleged to be due.

Since the allegations were stricken, appellee Federal has answered setting up as a separate defense the royalty adjustment orders prohibiting payment of the royalties to appellant. Upon that issue appellant will be free to contest the constitutional validity of the orders. The judgment below is accordingly

Affirmed.